

May 28, 1997

**MEMORANDUM TO:** Distribution

**FROM:** Michael J. Rubino, Associate Director  
Acquisition Services Branch

**SUBJECT:** Policy Memorandum No. 97-007 - Soliciting  
Firms Having Unresolved Audit Issues

1. Purpose. The purpose of Policy Memorandum No. 97-007 is to revise the policies and procedures in the Acquisition Policy Manual (APM) which allow FDIC to refrain from soliciting firms having unresolved audit issues. This memorandum also expands this policy to these same firms when participating as subcontractors under new solicitations and contracts.
2. Reference. (a) APM 3.J., *Contracting with Firms Having Unresolved Audit Issues*, page 3-31.  
(b) APM 8.H., *Contracting with Firms Having Unresolved Audit Issues*, page 8-33.
3. Scope. This Policy Memorandum supplements Circular 3700.16, APM, dated October 3, 1996. It applies to all Contracting Officers and other Acquisition Services Branch personnel involved in soliciting/awarding contracts and resolving issues raised under the Office of Inspector General and other audit agency reports (audit reports).
4. Background. The policy on soliciting firms with unresolved audit issues is important to FDIC's audit resolution process because it reserves the right to refrain from soliciting firms that fail to cooperate in resolving outstanding issues. Notwithstanding, the current policy must be revised to address two new changes. On March 20, 1997, FDIC published a Federal Register notice that established new contractor audit response timeframes as well as new FDIC notice requirements. In addition to the Federal Register notice, the policy requires further revision to address firms having unresolved audit issues when acting in a subcontractor capacity.

5. APM Change. In accordance with the foregoing, it has been determined that APM 3.J. and APM 8.H. shall be revised to reflect the Federal Register changes and apply the new policy to subcontractors having unresolved audit issues as stated in paragraph no. 4 above.

a. APM 3.J. *Contracting with Firms Having Unresolved Audit Issues*, is changed to delete 3.J.1. and 3.J.2. in their entirety and is restated as follows :

“3.J. *Policy*. FDIC may refrain from soliciting firms that have unresolved audit issues. In support of this policy, FDIC has determined that it is a prudent business practice to selectively refrain from soliciting new business or approving subcontracts with firms that fail to cooperate with FDIC in resolving audit issues. Procedures implementing this policy are stated in APM 8.H., *Contracting with Firms Having Unresolved Audit Issues*. ”

b. APM 8.H.1.a., *Scope*, is deleted in its entirety and is restated as follows:

“ 8.H.1.a. *Scope*. FDIC, in its discretion, may refrain from soliciting firms that have unresolved audit issues. In addition, FDIC may prohibit these same firms from participating as subcontractors under FDIC solicitations and/or contracts. The policy may be invoked when an Office of Inspector General (OIG) or other audit agency identifies questioned costs that may be potentially recoverable and audit issues remain outstanding or unresolved as a result of the contractor’s:

- (1) Failure to cooperate with resolution efforts undertaken by FDIC;
- (2) Failure to adequately support questioned costs; or
- (3) Failure to remit the disallowed portion of the questioned cost.”

c. APM 8.H.2.b., *Management decision*, is deleted in its entirety and is restated as follows:

“8.H.2.b. *Management decision* means the evaluation by FDIC management of the findings and recommendations included in an audit report and the issuance of a final decision by management concerning its response to such findings and recommendations, including actions concluded to be necessary.”

d. APM 8.H.3 is deleted in its entirety and is restated as follows:

“8.H.3.a. *Management Decision.* After the issuance of a final management decision, audit reports that identify questioned costs under FDIC contracts are assigned to a Contracting Officer in the Acquisition Services Branch, for resolution. The Contracting Officer shall provide a copy of the audit report to the contractor via express mail with a cover letter that:

- (1) identifies the ASB Contracting Officer primarily responsible for resolving the audit issues and to whom all communications from the contractor should be sent; and
- (2) requests that the contractor respond to the findings contained in the report within ten (10) business days of receipt of the letter or such other time as specified by the Contracting Officer. Such responses should include supporting documentation where appropriate.

8.H.3.b. *Contractor Failure to Adequately Respond.* If the contractor fails to respond to the request, fails to remit the disallowed portion of the questioned costs contained in the audit report or otherwise fails to adequately respond to the issues raised in the report, the Contracting Officer shall provide the contractor with a letter via express mail delivery that formally advises the contractor of its failure to cooperate pursuant to APM 8.H. The letter shall also state that the contractor:

- (1) shall now remit the requested repayment or makes other arrangements satisfactory to the Associate Director, ASB, within ten calendar days of receipt of this letter. If this does not occur, the Director, Division of Administration (DOA) may, effective as of that date, make a determination that the FDIC refrain from soliciting or awarding contracts for any future services and/or goods from this contractor;
- (2) is prohibited from participating as subcontractors under new FDIC solicitations and/or contracts; and
- (3) that this determination shall remain in effect until all issues identified in the audit report are resolved to FDIC's satisfaction and the contractor is provided a letter from the Contracting Officer of

this action.”

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6. Applicability to Awarded Contracts and Existing Subcontracts. A determination by the Director, DOA, to refrain from issuing new solicitations or approving new subcontracts to firms having unresolved audit issues will not affect active contracts and/or subcontracts. The contractual relationships will continue in accordance with the terms and conditions of the existing contract.

7. Effective Date. This Policy Memorandum is effective immediately.

8. Contacts. If you have any questions regarding this Policy Memorandum, please call David McDermott at (202) 942-3434.

cc: Jane Sartori  
John Lynn  
DOA Regional Managers

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